

REFERENCE TITLE: **improvised explosive device; definition**

State of Arizona  
Senate  
Forty-eighth Legislature  
Second Regular Session  
2008

# **SB 1153**

Introduced by  
Senator Gray C

**AN ACT**

**AMENDING SECTIONS 13-3101, 13-3102, 13-3110 AND 13-3112, ARIZONA REVISED STATUTES; RELATING TO EXPLOSIVES.**

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 13-3101, Arizona Revised Statutes, is amended to  
3 read:

4 13-3101. Definitions

5 A. In this chapter, unless the context otherwise requires:

6 1. "Deadly weapon" means anything that is designed for lethal  
7 use. The term includes a firearm **AND AN EXPLOSIVE**.

8 2. "Deface" means to remove, alter or destroy the manufacturer's  
9 serial number.

10 3. "Explosive" means any dynamite, nitroglycerine, black powder, or  
11 other similar explosive material, including plastic explosives. Explosive  
12 does not include ammunition or ammunition components such as primers,  
13 percussion caps, smokeless powder, black powder and black powder substitutes  
14 used for hand loading purposes.

15 4. "Firearm" means any loaded or unloaded handgun, pistol, revolver,  
16 rifle, shotgun or other weapon that will expel, is designed to expel or may  
17 readily be converted to expel a projectile by the action of an explosive.  
18 Firearm does not include a firearm in permanently inoperable condition.

19 5. **"IMPROVISED EXPLOSIVE DEVICE" MEANS A DEVICE THAT INCORPORATES**  
20 **EXPLOSIVES OR DESTRUCTIVE, LETHAL, NOXIOUS, PYROTECHNIC OR INCENDIARY**  
21 **CHEMICALS AND THAT IS DESIGNED TO DESTROY, DISFIGURE, TERRIFY OR HARASS.**

22 ~~5-~~ 6. "Occupied structure" means any building, object, vehicle,  
23 watercraft, aircraft or place with sides and a floor that is separately  
24 securable from any other structure attached to it, that is used for lodging,  
25 business, transportation, recreation or storage and in which one or more  
26 human beings either are or are likely to be present or so near as to be in  
27 equivalent danger at the time the discharge of a firearm occurs. Occupied  
28 structure includes any dwelling house, whether occupied, unoccupied or  
29 vacant.

30 ~~6-~~ 7. "Prohibited possessor" means any person:

31 (a) Who has been found to constitute a danger to himself or to others  
32 pursuant to court order under section 36-540, and whose court ordered  
33 treatment has not been terminated by court order.

34 (b) Who has been convicted within or without this state of a felony or  
35 who has been adjudicated delinquent for a felony and whose civil right to  
36 possess or carry a gun or firearm has not been restored.

37 (c) Who is at the time of possession serving a term of imprisonment in  
38 any correctional or detention facility.

39 (d) Who is at the time of possession serving a term of probation  
40 pursuant to a conviction for a domestic violence offense as defined in  
41 section 13-3601 or a felony offense, parole, community supervision, work  
42 furlough, home arrest or release on any other basis or who is serving a term  
43 of probation or parole pursuant to the interstate compact under title 31,  
44 chapter 3, article 4.

1 (e) Who is a prohibited possessor under 18 United States Code section  
2 922(g)(5), except as provided by 18 United States Code section 922(y).

3 ~~7-~~ 8. "Prohibited weapon" means, but does not include fireworks  
4 imported, distributed or used in compliance with state laws or local  
5 ordinances, any propellant, propellant actuated devices or propellant  
6 actuated industrial tools that are manufactured, imported or distributed for  
7 their intended purposes or a device that is commercially manufactured  
8 primarily for the purpose of illumination, including any of the following:

9 (a) Explosive, incendiary or poison gas:

10 (i) Bomb.

11 (ii) Grenade.

12 (iii) Rocket having a propellant charge of more than four ounces.

13 (iv) Mine.

14 (b) Device that is designed, made or adapted to muffle the report of a  
15 firearm.

16 (c) Firearm that is capable of shooting more than one shot  
17 automatically, without manual reloading, by a single function of the trigger.

18 (d) Rifle with a barrel length of less than sixteen inches, or shotgun  
19 with a barrel length of less than eighteen inches, or any firearm that is  
20 made from a rifle or shotgun and that, as modified, has an overall length of  
21 less than twenty-six inches.

22 (e) Instrument, including a nunchaku, that consists of two or more  
23 sticks, clubs, bars or rods to be used as handles, connected by a rope, cord,  
24 wire or chain, in the design of a weapon used in connection with the practice  
25 of a system of self-defense.

26 (f) Breakable container that contains a flammable liquid with a flash  
27 point of one hundred fifty degrees Fahrenheit or less and that has a wick or  
28 similar device capable of being ignited.

29 (g) Chemical or combination of chemicals, compounds or materials,  
30 including dry ice, that is ~~placed in a sealed or unsealed container~~ POSSESSED  
31 OR MANUFACTURED for the purpose of generating a gas to cause a mechanical  
32 failure, rupture or bursting ~~of the container~~ OR AN EXPLOSION OR DETONATION  
33 OF THE CHEMICAL OR COMBINATION OF CHEMICALS, COMPOUNDS OR MATERIALS.

34 (h) IMPROVISED EXPLOSIVE DEVICE.

35 ~~(h)~~ (i) Combination of parts or materials that is designed and  
36 intended for use in making or converting a device into an item set forth in  
37 subdivision (a), ~~or~~ (f) OR (h) of this paragraph.

38 B. The items set forth in subsection A, paragraph ~~7-~~ 8, subdivisions  
39 (a), (b), (c) and (d) of this section do not include any firearms or devices  
40 that are registered in the national firearms registry and transfer records of  
41 the United States treasury department or any firearm that has been classified  
42 as a curio or relic by the United States treasury department.

1           Sec. 2. Section 13-3102, Arizona Revised Statutes, is amended to read:  
2           13-3102. Misconduct involving weapons; defenses;  
3                           classification; definitions  
4           A. A person commits misconduct involving weapons by knowingly:  
5           1. Carrying a deadly weapon without a permit pursuant to section  
6 13-3112 except a pocket knife concealed on his person; or  
7           2. Carrying a deadly weapon without a permit pursuant to section  
8 13-3112 concealed within immediate control of any person in or on a means of  
9 transportation; or  
10          3. Manufacturing, possessing, transporting, selling or transferring a  
11 prohibited weapon; or  
12          4. Possessing a deadly weapon or prohibited weapon if such person is a  
13 prohibited possessor; or  
14          5. Selling or transferring a deadly weapon to a prohibited possessor;  
15 or  
16          6. Defacing a deadly weapon; or  
17          7. Possessing a defaced deadly weapon knowing the deadly weapon was  
18 defaced; or  
19          8. Using or possessing a deadly weapon during the commission of any  
20 felony offense included in chapter 34 of this title; or  
21          9. Discharging a firearm at an occupied structure in order to assist,  
22 promote or further the interests of a criminal street gang, a criminal  
23 syndicate or a racketeering enterprise; or  
24          10. Unless specifically authorized by law, entering any public  
25 establishment or attending any public event and carrying a deadly weapon on  
26 his person after a reasonable request by the operator of the establishment or  
27 the sponsor of the event or the sponsor's agent to remove his weapon and  
28 place it in the custody of the operator of the establishment or the sponsor  
29 of the event for temporary and secure storage of the weapon pursuant to  
30 section 13-3102.01; or  
31          11. Unless specifically authorized by law, entering an election polling  
32 place on the day of any election carrying a deadly weapon; or  
33          12. Possessing a deadly weapon on school grounds; or  
34          13. Unless specifically authorized by law, entering a nuclear or  
35 hydroelectric generating station carrying a deadly weapon on his person or  
36 within the immediate control of any person; or  
37          14. Supplying, selling or giving possession or control of a firearm to  
38 another person if the person knows or has reason to know that the other  
39 person would use the firearm in the commission of any felony; or  
40          15. Using, possessing or exercising control over a deadly weapon in  
41 furtherance of any act of terrorism as defined in section 13-2301 or  
42 possessing or exercising control over a deadly weapon knowing or having  
43 reason to know that it will be used to facilitate any act of terrorism as  
44 defined in section 13-2301.

1 B. Subsection A, paragraph 1 of this section shall not apply to a  
2 person in his dwelling, on his business premises or on real property owned or  
3 leased by that person.

4 C. Subsection A, paragraphs 1, 2, 3, 7, 10, 11, 12 and 13 of this  
5 section shall not apply to:

6 1. A peace officer or any person summoned by any peace officer to  
7 assist and while actually assisting in the performance of official duties; or

8 2. A member of the military forces of the United States or of any  
9 state of the United States in the performance of official duties; or

10 3. A warden, deputy warden or correctional officer of the state  
11 department of corrections; or

12 4. A person specifically licensed, authorized or permitted pursuant to  
13 a statute of this state or of the United States.

14 D. Subsection A, paragraphs 3 and 7 of this section shall not apply  
15 to:

16 1. The possessing, transporting, selling or transferring of weapons by  
17 a museum as a part of its collection or an educational institution for  
18 educational purposes or by an authorized employee of such museum or  
19 institution, if:

20 (a) Such museum or institution is operated by the United States or  
21 this state or a political subdivision of this state, or by an organization  
22 described in 26 United States Code section 170(c) as a recipient of a  
23 charitable contribution; and

24 (b) Reasonable precautions are taken with respect to theft or misuse  
25 of such material.

26 2. The regular and lawful transporting as merchandise; or

27 3. Acquisition by a person by operation of law such as by gift, devise  
28 or descent or in a fiduciary capacity as a recipient of the property or  
29 former property of an insolvent, incapacitated or deceased person.

30 E. Subsection A, paragraph 3 of this section shall not apply to the  
31 merchandise of an authorized manufacturer of or dealer in prohibited weapons,  
32 when such material is intended to be manufactured, possessed, transported,  
33 sold or transferred solely for or to a dealer, a regularly constituted or  
34 appointed state, county or municipal police department or police officer, a  
35 detention facility, the military service of this or another state or the  
36 United States, a museum or educational institution or a person specifically  
37 licensed or permitted pursuant to federal or state law.

38 F. Subsection A, paragraph 1 of this section shall not apply to a  
39 weapon or weapons carried in a belt holster ~~which holster~~ THAT is wholly or  
40 partially visible, or carried in a scabbard or case designed for carrying  
41 weapons ~~which scabbard or case~~ THAT is wholly or partially visible or carried  
42 in luggage. Subsection A, paragraph 2 of this section shall not apply to a  
43 weapon or weapons carried in a case, holster, scabbard, pack or luggage that  
44 is carried within a means of transportation or within a storage compartment,  
45 map pocket, trunk or glove compartment of a means of transportation.

1 G. Subsection A, paragraph 10 of this section shall not apply to  
2 shooting ranges or shooting events, hunting areas or similar locations or  
3 activities.

4 H. Subsection A, paragraph 3 of this section shall not apply to a  
5 weapon described in section 13-3101, subsection A, paragraph ~~7- 8~~,  
6 subdivision (e), if such weapon is possessed for the purposes of preparing  
7 for, conducting or participating in lawful exhibitions, demonstrations,  
8 contests or athletic events involving the use of such weapon. Subsection A,  
9 paragraph 12 of this section shall not apply to a weapon if such weapon is  
10 possessed for the purposes of preparing for, conducting or participating in  
11 hunter or firearm safety courses.

12 I. Subsection A, paragraph 12 of this section shall not apply to the  
13 possession of a:

14 1. Firearm that is not loaded and that is carried within a means of  
15 transportation under the control of an adult provided that if the adult  
16 leaves the means of transportation the firearm shall not be visible from the  
17 outside of the means of transportation and the means of transportation shall  
18 be locked.

19 2. Firearm for use on the school grounds in a program approved by a  
20 school.

21 J. The operator of the establishment or the sponsor of the event or  
22 the employee of the operator or sponsor or the agent of the sponsor,  
23 including a public entity or public employee, is not liable for acts or  
24 omissions pursuant to subsection A, paragraph 10 of this section unless the  
25 operator, sponsor, employee or agent intended to cause injury or was grossly  
26 negligent.

27 K. Misconduct involving weapons under subsection A, paragraph 9, 14 or  
28 15 of this section is a class 3 felony. Misconduct involving weapons under  
29 subsection A, paragraph 3, 4, 8 or 13 of this section is a class 4 felony.  
30 Misconduct involving weapons under subsection A, paragraph 12 of this section  
31 is a class 1 misdemeanor unless the violation occurs in connection with  
32 conduct ~~which~~ THAT violates ~~the provisions of~~ section 13-2308, subsection A,  
33 paragraph 5, section 13-2312, subsection C, section 13-3409 or section  
34 13-3411, in which case the offense is a class 6 felony. Misconduct involving  
35 weapons under subsection A, paragraph 5, 6 or 7 of this section is a class 6  
36 felony. Misconduct involving weapons under subsection A, paragraph 1, 2, 10  
37 or 11 of this section is a class 1 misdemeanor.

38 L. For the purposes of this section:

39 1. "Public establishment" means a structure, vehicle or craft that is  
40 owned, leased or operated by this state or a political subdivision of this  
41 state.

42 2. "Public event" means a specifically named or sponsored event of  
43 limited duration THAT IS either conducted by a public entity or conducted by  
44 a private entity with a permit or license granted by a public entity. Public  
45 event does not include an unsponsored gathering of people in a public place.

1           3. "School" means a public or nonpublic kindergarten program, common  
2 school or high school.

3           4. "School grounds" means in, or on the grounds of, a school.

4           Sec. 3. Section 13-3110, Arizona Revised Statutes, is amended to read:

5           13-3110. Misconduct involving simulated explosive devices:  
6 classification; definition

7           A. A person commits misconduct involving simulated explosive devices  
8 by intentionally giving or sending to another person or placing in a private  
9 or public place a simulated explosive device with the intent to terrify,  
10 intimidate, threaten or harass.

11           B. The placing or sending of a simulated explosive device without  
12 written notice attached to the device in a conspicuous place that the device  
13 has been rendered inert and is possessed for the purpose of curio or relic  
14 collection, display or other similar purpose is prima facie evidence of  
15 intent to terrify, intimidate, threaten or harass.

16           C. Misconduct involving simulated explosive devices is a class 1  
17 misdemeanor.

18           D. ~~It~~ **FOR THE PURPOSES OF** this section, "simulated explosive device"  
19 means a simulation of a prohibited weapon described in section 13-3101,  
20 **SUBSECTION A**, paragraph ~~7~~ **8**, subdivision (a), ~~or~~ (f) **OR (h)** that a  
21 reasonable person would believe is such a prohibited weapon.

22           Sec. 4. Section 13-3112, Arizona Revised Statutes, is amended to read:

23           13-3112. Concealed weapons; qualification; application; permit  
24 to carry; certificate of firearms proficiency;  
25 training program; program instructors; report;  
26 applicability; violation; classification

27           A. The department of public safety shall issue a permit to carry a  
28 concealed weapon to a person who is qualified under this section. The person  
29 shall carry the permit at all times when the person is in actual possession  
30 of the concealed weapon and shall present the permit for inspection to any  
31 law enforcement officer on request.

32           B. A person who fails to carry the permit at all times that the person  
33 is in actual possession of a concealed weapon may have the permit suspended.  
34 The department of public safety shall be notified of all violations of this  
35 section and shall immediately suspend the permit. The permittee shall  
36 present the permit to the law enforcement agency or the court. On  
37 notification of the presentation of the permit, the department shall restore  
38 the permit.

39           C. The permit of a person who is arrested or indicted for an offense  
40 that would make the person unqualified under section 13-3101, subsection A,  
41 paragraph ~~6~~ **7** or this section shall be immediately suspended and seized.  
42 The permit of a person who becomes unqualified on conviction of that offense  
43 shall be revoked. The permit shall be restored on presentation of  
44 documentation from the court if the permittee is found not guilty or the  
45 charges are dismissed. The permit shall be restored on presentation of

1 documentation from the county attorney that the charges against the permittee  
2 were dropped or dismissed.

3 D. A permittee who carries a concealed weapon and who fails to present  
4 a permit for inspection on the request of a law enforcement officer is guilty  
5 of a petty offense. A permittee shall not be convicted of a violation of  
6 this subsection if the permittee produces to the court a legible permit that  
7 is issued to the permittee and that was valid at the time the violation of  
8 this subsection occurred.

9 E. The department of public safety shall issue a permit to an  
10 applicant who meets all of the following conditions:

11 1. Is a resident of this state or a United States citizen.

12 2. Is twenty-one years of age or older.

13 3. Is not under indictment for and has not been convicted in any  
14 jurisdiction of a felony.

15 4. Does not suffer from mental illness and has not been adjudicated  
16 mentally incompetent or committed to a mental institution.

17 5. Is not unlawfully present in the United States.

18 6. Satisfactorily completes a firearms safety training program  
19 approved by the department of public safety pursuant to subsection 0 of this  
20 section. This paragraph does not apply to:

21 (a) A person who is an active duty Arizona peace officer standards and  
22 training board certified or federally credentialed peace officer or who is  
23 honorably retired as a federal, state or local peace officer with a minimum  
24 of ten years of service.

25 (b) A person who is an active duty county detention officer and who  
26 has been weapons certified by the officer's employing agency.

27 (c) A person who is issued a certificate of firearms proficiency  
28 pursuant to subsection X of this section.

29 F. The application shall be completed on a form prescribed by the  
30 department of public safety. The form shall not require the applicant to  
31 disclose the type of firearm for which a permit is sought. The applicant  
32 shall attest under penalty of perjury that all of the statements made by the  
33 applicant are true. The applicant shall submit the application to the  
34 department with a certificate of completion from an approved firearms safety  
35 training program, two sets of fingerprints and a reasonable fee determined by  
36 the director of the department.

37 G. On receipt of a concealed weapon permit application, the department  
38 of public safety shall conduct a check of the applicant's criminal history  
39 record pursuant to section 41-1750. The department of public safety may  
40 exchange fingerprint card information with the federal bureau of  
41 investigation for federal criminal history record checks.

42 H. The department of public safety shall complete all of the required  
43 qualification checks within sixty days after receipt of the application and  
44 shall issue a permit within fifteen working days after completing the  
45 qualification checks if the applicant meets all of the conditions specified

1 in subsection E of this section. If a permit is denied, the department of  
2 public safety shall notify the applicant in writing within fifteen working  
3 days after the completion of all of the required qualification checks and  
4 shall state the reasons why the application was denied. On receipt of the  
5 notification of the denial, the applicant has twenty days to submit any  
6 additional documentation to the department. On receipt of the additional  
7 documentation, the department shall reconsider its decision and inform the  
8 applicant within twenty days of the result of the reconsideration. If  
9 denied, the applicant shall be informed that the applicant may request a  
10 hearing pursuant to title 41, chapter 6, article 10.

11 I. On issuance, a permit is valid for five years, except a permit that  
12 is held by a member of the United States armed forces, including a member of  
13 the Arizona national guard or a member of the reserves of any military  
14 establishment of the United States, who is on federal active duty and who is  
15 deployed overseas shall be extended until ninety days after the end of the  
16 member's overseas deployment.

17 J. The department of public safety shall maintain a computerized  
18 permit record system that is accessible to criminal justice agencies for the  
19 purpose of confirming the permit status of any person who claims to hold a  
20 valid permit issued by this state. This information and any other records  
21 that are maintained regarding applicants, permit holders or instructors shall  
22 not be available to any other person or entity except on an order from a  
23 state or federal court.

24 K. Notwithstanding subsection J of this section, it is a defense to  
25 any charge for carrying a deadly weapon without a permit by a member of the  
26 United States armed forces, including a member of the Arizona national guard  
27 or a member of the reserves of any military establishment of the United  
28 States, if the member was on federal active duty at the time the permit  
29 expired and the member presents documentation indicating release from active  
30 duty or reassignment from overseas deployment within the preceding ninety  
31 days.

32 L. A permit issued pursuant to this section is renewable every five  
33 years. Before a permit may be renewed, a criminal history records check  
34 shall be conducted pursuant to section 41-1750 within sixty days after  
35 receipt of the application for renewal. For the purposes of permit renewal,  
36 the permit holder is not required to submit additional fingerprints.

37 M. Applications for renewal shall be accompanied by a fee determined  
38 by the director of the department of public safety.

39 N. The department of public safety shall suspend or revoke a permit  
40 issued under this section if the permit holder becomes ineligible pursuant to  
41 subsection E of this section. The department of public safety shall notify  
42 the permit holder in writing within fifteen working days after the revocation  
43 or suspension and shall state the reasons for the revocation or suspension.

1           0. An organization shall apply to the department of public safety for  
2 approval of its firearms safety training program. The department shall  
3 approve a program that meets the following requirements:

- 4           1. Is at least eight hours in length.  
5           2. Is conducted on a pass or fail basis.  
6           3. Addresses all of the following topics in a format approved by the  
7 director of the department:

- 8           (a) Legal issues relating to the use of deadly force.  
9           (b) Weapon care and maintenance.  
10          (c) Mental conditioning for the use of deadly force.  
11          (d) Safe handling and storage of weapons.  
12          (e) Marksmanship.  
13          (f) Judgmental shooting.

14          4. Is conducted by instructors who submit to a background  
15 investigation, including a check for warrants and a criminal history records  
16 check.

17          P. If approved pursuant to subsection 0 of this section, the  
18 organization shall submit to the department of public safety two sets of  
19 fingerprints from each instructor and a fee to be determined by the director  
20 of the department of public safety. On receipt of the fingerprints and fee,  
21 the department of public safety shall conduct a check of each instructor's  
22 criminal history record pursuant to section 41-1750. The department of  
23 public safety may exchange this fingerprint card information with the federal  
24 bureau of investigation for federal criminal history record checks.

25          Q. The proprietary interest of all approved instructors and programs  
26 shall be safeguarded, and the contents of any training program shall not be  
27 disclosed to any person or entity other than a bona fide criminal justice  
28 agency, except ~~upon~~ **ON** an order from a state or federal court.

29          R. If the department of public safety rejects a program, the rejected  
30 organization may request a hearing pursuant to title 41, chapter 6,  
31 article 10.

32          S. The department of public safety shall maintain information  
33 comparing the number of permits requested, the number of permits issued and  
34 the number of permits denied. The department shall annually report this  
35 information to the governor and the legislature.

36          T. The director of the department of public safety shall adopt rules  
37 for the purpose of implementing and administering the concealed weapons  
38 permit program including fees relating to permits and certificates that are  
39 issued pursuant to this section.

40          U. This state and any political subdivision of this state shall  
41 recognize a concealed weapon, firearm or handgun permit or license that is  
42 issued by another state or a political subdivision of another state if both:

- 43           1. The permit or license is recognized as valid in the issuing state.  
44           2. The permit or license holder is all of the following:  
45           (a) Not a resident of this state.

1 (b) Legally present in this state.

2 (c) Not legally prohibited from possessing a firearm in this state.

3 V. For the purpose of establishing mutual permit or license  
4 recognition with other states, the department of public safety shall enter  
5 into a written agreement if another state requires a written agreement.

6 W. Notwithstanding the provisions of this section, a person with a  
7 concealed weapons permit from another state may not carry a concealed weapon  
8 in this state if the person is under twenty-one years of age or is under  
9 indictment for, or has been convicted of, a felony offense in any  
10 jurisdiction, even if the person's rights have been restored and the  
11 conviction is expunged, set aside or vacated.

12 X. The department of public safety may issue certificates of firearms  
13 proficiency according to the Arizona peace officer standards and training  
14 board firearms qualification for the purposes of implementing the law  
15 enforcement officers safety act of 2004 (P.L. 108-277; 118 Stat. 865; 18  
16 United States Code sections 926B and 926C). A law enforcement agency shall  
17 issue to a law enforcement officer who has honorably retired a photographic  
18 identification that states that the officer has honorably retired from the  
19 agency. The chief law enforcement officer shall determine whether an officer  
20 has honorably retired and the determination is not subject to review. A law  
21 enforcement agency has no obligation to revoke, alter or modify the honorable  
22 discharge photographic identification based on conduct that the agency  
23 becomes aware of or that occurs after the officer has separated from the  
24 agency.